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In re Application of	:	DECISION
Manfred Berndt	:	ON PETITION
Serial No.: 09/598,890	:	
Filed : June 22, 2000	:	
For: Supply Element for a	:	
Laboratory Microchip	:	

This is a decision on a petition under 37 CFR 1.144 filed June 6, 2003 requesting a review of a restriction requirement as set forth in the Office action mailed September 13, 2002.

That restriction requirement involved two groups as follows: Group I, claims 17-31 and 47-50, drawn to an apparatus; Group II, claims 32-46 and 51-55, drawn to a method. The basis for the restriction was election by original presentation with respect to the distinction between Groups I and II as well as the method claims not being commensurate in scope with the previously examined apparatus claims.

With respect to the restriction between Groups I and II, the applicants' argument is that in an amendment after final the method claims were limited to the same scope as the apparatus and as such the claims do not require divergent searches and should be examined together.

Given the above, the applicants' argument is unpersuasive because (a) the examiner properly applied the standard for restriction via election by original presentation when the claims were first added to the application and, (b) because it was only in an after final amendment that the claims were made commensurate in scope with the originally filed apparatus claims and entry of any amendment after final is not a matter of right but is at the discretion of the examiner. A review of the prosecution history indicates that the examiner properly refused entry of the amendment.

The petition is **Denied**.

Jacqueline Stone
Director, Technology Center 1700
Chemical and Materials Engineering

Lowe, Hauptman, Gilman and Berner, LLP
1700 Diagonal Road
Alexandria, VA 22314